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## FISCAL IMPACT REPORT

SPONSOR: Taylor, J.P. DATE TYPED: 03/03/03 HB CS/416/aHJC/aHFI#1

SHORT TITLE: Create Office of Guardianship SB \_\_\_\_\_

ANALYST: Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			NFI		

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC files

### SUMMARY

Synopsis of HFI#1 Amendment

House Floor Amendment 1 removes the \$100,000 appropriation.

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Government and Urban Affairs Committee Substitute for House Bill 416 adds financial records to the list of items to which office of guardianship shall have access.

Synopsis of Original Bill

The House Government & Urban Affairs Committee Substitute for House Bill 416 appropriates \$100,000 from the general fund to the Developmental Disabilities Planning Council (DDPC) for the purpose of establishing the guardianship program. This bill moves the guardianship program out of the Attorney General's Office (AGO) into the DDPC.

HB 416/HGUACS establishes the authority and responsibilities of the guardianship program, provides for the monitoring and oversight of contracts for guardianship services, establishes minimum requirements for all such contracts, requires the establishment of a procedure for investigating and resolving complaints about contractors, transfers all assts and obligations of the current program to the new office.

### Significant Issues

The AGO has administered contracts for state-funded guardianship services for income-eligible adults since 1995. Prior to 1995, such services were provided through various state agencies, including the AOA and the DOH. Although the 1995 law had the advantage of consolidating state-funded guardianship services within a single agency, issues remain concerning whether the AGO is the proper place for such services. First, the AGO is not a social services agency and is not well equipped to assess the quality and appropriateness of social services programs. Second, the AGO, the AOA, and the DOH each have statutory authority to investigate, administer, or enforce different laws relating to the provision of services to vulnerable adults that may be in conflict with administering guardianship services.

The DDPC is already established under state and federal law. They encourage coordination in planning and services for persons with developmental disabilities and they advocate for the needs of persons with disabilities. They receive state and federal funds and are experienced in entering into contracts for services and in monitoring them.

### **FISCAL IMPLICATIONS**

The appropriation of \$100.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund. (See Technical Issue below)

### **TECHNICAL ISSUES**

Currently the AGO is appropriated \$1,863.2 in the general appropriation act for guardianship services. For HB 416/HGUACS to be effective, it is likely the bill needs to provide for this appropriation to be transferred from the AGO's budget to the DDPC.

### **ADMINISTRATIVE IMPLICATIONS**

HB 416/HGUACS requires the DDPC to issue regulations to establish a process for the filing, investigation and resolution of complaints against guardianship contractors. regulations specify

### **OTHER SUBSTANTIVE ISSUES**

The DDPC has noted the following issues:

Unnecessarily restrictive types of guardianship must be avoided. There has been a trend in New Mexico for most persons with developmental disabilities who are deemed in need of a guardian to be appointed a plenary (general or full) guardian. In many cases, persons with developmental disabilities are able to make sound decisions about some areas of their life when information is provided clearly. For example, a person may be able to give informed consent for a medical procedure but is not able to maintain their finances without assistance. In cases like these, it is important that a special or partial guardian (for example, guardian of estate but not guardian of person) be appointed. In order to protect an individual's civil rights, an increased level of scrutiny must be paid by the office of guardianship services.

There must be full accountability on the part of the guardian. The office of guardianship must carefully examine the end-of-year report of each guardianship case. Reports from advocacy groups and individuals across the state indicate that guardianship is renewed with a “rubber stamp” without careful perusal as to whether the person or entity acting as guardian has completed all the responsibilities a guardian is required to cover, especially in the area of fiscal management. The proposed office of guardianship must have procedures in place to review guardianship terms carefully to determine whether the type of guardianship granted previously is still appropriate, and whether the guardian has fulfilled all of its responsibilities in an ethically and fiscally responsible manner.

DW/prr